REMARKS

This paper responds to the restriction and species election requirement set forth in the Office Action mailed on March 25, 2008.

A. Restriction Requirement

The Examiner restricted the pending claims into five groups, as detailed at page 2 of the Office Action. In response, Applicants elect **with traverse** Group II, claims 64, 68, 69 & 76 - 80, drawn to an isolated polypeptide and kit thereof. Applicants reserve the right to request rejoinder of the process claims.

In relation to their traversal, Applicants note the Examiner's allegation that the restriction groups lack a common technical feature and, thus, are not related to a general inventive concept. In particular, the Examiner opines that the method of the invention uses an RNA polymerase that was known from Chu; hence, that the method cannot be considered a special technical feature. The Examiner states that " "...an RNA polymerase capable of producing short complementary RNA copies of said template, which are scattered throughout the entire template length was known in the art at the time of invention as demonstrated by Chu" (US 5,631,129); see page 3, first paragraph of the Office Action."

Applicants respectfully disagree with this characterization of Chu. The latter employs co-functioning RNA primers that are comprised of a first nucleotide sequence (first primer sequence) and a second nucleotide sequence (second primer sequence). See "Summary" in column 3, lines 46 - 58. The polymerase of the present invention does not require a primer for the initiation of the RNA synthesis. See present abstract and paragraph 0011 of the published application.

Furthermore, Chu's goal is replicating a target nucleic acid in a biological sample. He uses an RNA-dependent RNA polymerase, preferably Q-beta replicase. The polymerase of Chu replicates one and the same short segment of nucleic acid. In the present invention, by contrast, the polymerase is capable of producing 1) template length copies and 2) short complementary RNA copies of a nucleic acid template scattered throughout the entire template length.

For at least these reasons, the present invention possesses a unique, special feature that is distinct from the teachings of Chu. Restriction of the present invention is improper, therefore, and Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

B. Election of Restriction Subgroup Requirement

The Examiner additionally required an election of a "patentably distinct subgroup," as detailed on pages 3 and 4 of the Office Action. To be responsive, Applicants provisionally elect the subgroup comprising amino acid sequence SEQ ID NO: 4. Claims 64, 68, 69 & 76 - 80, read on the selected species. This "subgroup" election is unwarranted, however, and so Applicants elect **with traverse**.

Applicants note that elected claim 64 enunciates a Markush group. According to the PTO's own rules,

> *A Markush-type claim recites alternatives in a format such as "selected from the group consisting of A, B and C." See Ex parte Markush, 1925 C.D. 126 (Comm'r Pat. 1925).* The members of the Markush group (A, B, and C in the example above) ordinarily must belong to a recognized physical or chemical class or to an art-recognized class. when a Markush group occurs in a claim reciting a process or a combination (not a single compound), *it is sufficient if the members of the group are disclosed in the specification to possess at least one property in common which is mainly responsible for their function in the claimed relationship*, and it is clear from their very nature or from the prior art that all of them possess this property.

MPEP § 803.02 (emphasis added). Applicants submit that the recited nucleic acids sequences share a common feature, namely, their encoding of a unique RNA polymerase, as discussed above.

The MPEP also states that:

> If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, *the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions.* In such a case, the examiner will not follow the procedure described below and will not require provisional election of a single species. *Since the decisions in In re Weber, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and In re Haas, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. In re Harnisch, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and Ex parte Hozumi, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984).* Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility.

Id. (emphasis added). Accordingly, there is no showing of record to justify requiring an election of a "subgroup," such as a single sequence ID number, from within a Markush-type claim. Under MPEP

Section 803.03, therefore, Applicants respectfully request reconsideration and withdrawal of the Restriction Subgroup requirement.

C. Conclusion

Applicants submit that the present application is in allowable condition, and they request an early indication to this effect. Should Examiner Babic feel that any issue warrants further consideration, he is invited to contact the undersigned directly at the office number indicated below.

The Commissioner also is hereby authorized to charge any additional fees, which may be required under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account.

Respectfully submitted,

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By S. A. Bent

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5404
Facsimile: (202) 672-5399

Stephen A. Bent
Attorney for Applicant
Registration No. 29,768